IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-1847

SHELBY COUNTY, TENNESSEE and THE MEMBERS OF THE SHELBY COUNTY QUARTERLY COURT,

Defendants-Appellants,

-VS-

STATE OF TENNESSEE, EX REL EDWARD B. PEEL,

Plaintiff-Appellee

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF TENNESSEE

JURISDICTIONAL STATEMENT

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MEMBERS OF THE
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QUARTERLY COURT,

Appellants, NO.

-VS-

STATE OF
TENNESSEE, EX REL
EDWARD B. PEEL,

Appellee.

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The order denying certiorari by the Tennessee Supreme Court is set forth in Exhibit 4, infra. The opinion of the Tennessee Court of Appeals is unreported. The text of this opinion is set forth in Exhibit 3, infra. The opinion of the Chancery Court of Shelby County, Tennessee is unreported. The text of this opinion is set forth in Exhibit 2, infra. The text of the unpublished order given by the three Judge United States District Court in Hyden v. Baker, 286 F.Supp. 475, on September 3, 1968 is set forth in Exhibit 1, infra.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(1), this being an appeal which draws into question the validity of a decision by a three Judge United States District Court on the ground that it was repugnant to the Constitution and statutes of the State of Tennessee, 28 U.S.C. §1257(2), this being an appeal which draws into question the validity of Article VI, Section 15 of the Constitution of the State of Tennessee on the ground of its being repugnant to the Fourteenth Amendment to the United States Constitution and the decision is in favor of its validity, and 28 U.S.C. §1257(3) where right, title, privilege or immunity is specifically set up or claimed under the Constitution, treaties or statutes of . . . or, authority exercised under the United States. The appeal herein is from a final decree made and entered by the Chancery Court of Shelby County, Tennessee on November 25, 1975 which was affirmed by the Western Section Court of Appeals of Tennessee on October 13, 1976 and certiorari then denied by the Tennessee Supreme Court on March 28, 1977. This case was instituted in the above stated Chancery Court by the plaintiff pursuant to Section 5-111 of the Tennessee Code Annotated, petitioning the Chancery Court to review the composition of the Quarterly Court of Shelby County, Tennessee, which plaintiff alleged to be in violation of Article VI, Section 15 of the Constitution of the State of Tennessee and Section 19-102 of the Tennessee Code Annotated and to order a reapportionment of the Court regardless of the fact that virtually this same plan had been approved

by the United States District Court on September 3, 1968 as fulfilling the requirements of the Fourteenth Amendment to the United States Constitution.

The final decree appealed from was made and entered on March 28, 1977. Notice of appeal was filed in the Tennessee Supreme Court in Jackson, Tennessee on June 24, 1977. As the Supreme Court of Tennessee denied certiorari, the requisite final determination in the state courts has been made and this matter is appropriately brought to this Court by appeal.

The Supreme Court of the United States has jurisdiction to review by appeal from the state courts the judgment and decree complained of by the provisions of 28 U.S.C. §1257(1), (2) and (3).

In the event that the Court does not consider appeal the proper mode of review, appellants request that the papers whereupon this appeal is taken be regarded and acted upon as a petition for writ of certiorari pursuant to 28 U.S.C. §2103.

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case. Oyama v. State of Cal., 332 U.S. 633 (1948); Morris v. State of Alabama, 294 U.S. 587 (1934); Mayor & Aldermen of the City of Nashville v. Cooper, 73 U.S. 247; Reynolds v. Sims, 377 U.S. 533; Vann v. Baggett, 370 U.S. 871; Parsons v. Buckley, 379 U.S. 359; and Sudekum v. Hayes, 414 F.2d 41 (1969).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article Two, Clause Two and the Fourteenth Amendment to the Constitution of the United States. The particular part of Article Two of the United States Constitution involved is found in the 2nd paragraph which provides in pertinent part as follows:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judge in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

This case also involves Article VI of the Constitution of the State of Tennessee which states:

> "Districts in Counties--Justices and constables--Number--Term--Removal from district.--The different Counties of this State shall be laid off, as the General Assembly may direct, into districts of convenient size, so that the whole number in each County shall not be more than twenty-five, or four for every one hundred square miles. There shall be two Justices of the Peace and one Constable elected in each district by the qualified voters

therein, except districts including County towns, which shall elect three Justices and two Constables. The jurisdiction of said officers shall be co-extensive with the County. Justices of the Peace shall be elected for the term of six, and Constables for the term of two years. Upon the removal of either of said officers from the district in which he was elected, his office shall become vacant from the time of such removal. Justices of the Peace shall be commissioned by the Governor. The Legislature shall have power to provide for the appointment of an additional number of Justices of the Peace in incorporated towns."

Also involved are the following statutes of the State of Tennessee, found in Tennessee Code Annotated (TCA) as follows:

T.C.A. Section 5-110. "District maps and boundaries.--The quarterly county court shall make or have made, a map showing civil districts of the county and, on the same or on a separate map, the county districts from which the members are elected to the quarterly county court and shall have typed, or printed, a description of the boundaries of the civil districts and the county districts. A copy of the map or maps and the accompanying descriptions of the civil district boundaries and the

county district boundaries, shall be filed with the county court clerk and a copy also shall be filed with the secretary of state. The quarterly county courts shall have until July 1, 1969, to comply with the foregoing provision as it concerns civil districts and until April 1, 1972, as it concerns other districts from which members of the court are elected. Revised maps shall be filed within ninety (90) days of any revision in any civil district or any other district from which members of the court are elected."

T.C.A. Section 5-111. "Reapportionment of justice of peace districts--Election.--Prior to January 1, 1972, the county courts of the different counties shall meet and, a majority of the acting justices of the peace being present and concurring, shall change the boundaries of districts or redistrict a county entirely if necessary to apportion the justices of the peace among the districts substantially according to population, so as to provide for substantially the same number of persons per justice of the peace in each of the districts. At the August 1972 election, justices of the peace shall be elected from the districts so provided.

"To determine the population within a district, United States census of population shall be used, but when United States census of

population is not available the court may presume that the number of registered voters in a district is in direct proportion to the population within a district.

"Not later than each six (6) years following the first apportionment under the terms of this section, and each six (6) years thereafter the county courts, a majority of the acting justices of the peace being present and concurring, shall apportion the justices of the peace among the districts substantially according to population.

A county court may reapportion the districts at a lesser interval than every six (6) years so that at the first election of justices following publication of the census results, justices may be elected from districts of substantially equal population.

"Upon application of any citizen of the county affected the chancery court of said county shall have original jurisdiction to review the county court's apportionment, and shall have jurisdiction to make such orders and decrees amending that apportionment to comply with this section, or if the county court fail to make apportionment, shall make a decree ordering an apportionment."

T.C.A. Section 5-112. "Civil districts boundaries and record keeping.--The record keeping role of the present civil districts, shall be left undisturbed and the boundaries of civil districts shall be preserved as they exist at the time of the apportionment of the quarterly county courts."

T.C.A. Section 19-1902. "Number from each district.--For each district of every county, except those districts including county towns, two (2) justices of the peace shall be elected by the qualified voters therein."

T.C.A. Section 19-103. "Number elected from county town district.--No district shall elect more than two (2) justices of the peace, except the district wherein the county town is located, which shall elect three (3)."

QUESTIONS PRESENTED

1. Whether a state court violates the "Supremacy Clause" Article 2 Clause 2 of the United States Constitution in striking down as repugnant to state law a Quarterly County Court apportionment plan which has previously been reviewed and approved as constitutional by a three judge United States District Court which declared in a companion case:

"The objection that the (apportionment) plan violates a state constitutional provision in pro-

viding for members elected at large is without merit, since the ultimate measure of the plan's validity is the Fourteenth Amendment to the United States Constitution and not state law."
294 F.Supp. at 810.

2. Whether there is an unavoidable conflict between the Federal Constitution and the Constitution of the State of Tennessee when the Fourteenth Amendment of the United States Constitution has been interpreted to require "one man-one vote" and the Constitution of the State of Tennessee mandates a Quarterly County Court districting system whereby certain voters in the county are able to cast ballots for three County Squires but other voters in the same county are able to only cast ballots for two County Squires.

STATEMENT OF THE CASE

In 1968 in the Cases of Hyden v. Baker and Bennett v. Elliott, 286 F.Supp. 475, a three Judge Federal Court, the United States District Court for the Middle District of Tennessee at Nashville, Tennessee, ruled that the apportionment provisions of the Tennessee Constitution and those portions of the Public and Private Acts relating thereto which allowed the election of Justices of the Peace from each incorporated town within the county were void because they violated rights secured by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The Court ordered the Shelby County Quarterly Court to redistrict Shelby

County for purposes of reapportioning the membership of said Court in accordance with the "one-man, one-vote" principle. A proposed plan for reapportioning the Shelby County Quarterly Court was submitted to the Federal Court and was approved by said Court on September 3, 1968. (Exhibit 1)

On November 5, 1968, in conjunction with a General Election under the approved plan, eleven (11) Justices of the Peace were elected to take office on January 1, 1969 and to hold office until September 1, 1972, or until their successors were elected and qualified.

On January 10, 1972, the Shelby County Quarterly Court adopted a resolution approving various ward and precinct changes as recommended by the Shelby County Election Commission which amended the Court's resolution adopted December 13, 1971. On August 3, 1972, in conjunction with the County General Election, eleven (11) Justices of the Peace were elected pursuant to the reapportionment plan which was approved and adopted by the Shelby County Quarterly Court on December 13, 1971 and January 10, 1972, to take office on September 1, 1972, and hold office until September 1, 1978, or until their successors were elected and qualified.

The plan for Shelby County adopted on August 7, 1968, provided that said County would be divided into eleven (11) magisterial districts with one (1) magistrate from each district as follows:

DISTRICT ONE (1) shall be composed of the areas encompassed by the following wards and precincts of the City of Memphis and Shelby County: Arlington, Bartlett, Brunswick, Ellendale, Kerrville, Locke, Lucy, McConnell's, Millington, Raleigh, Scenic Hills, Stewartville, Woodstock, Capleville, Collierville, Cordova, Eads, Forest Hill, Germantown, Morning Sun, Mullins, Ross' Store, White Station, 69 - 1,2, 71 - 1, 2, 73 - 1, 2, 74 - 1, 2.

DISTRICT TWO (2) shall be composed of the areas encompassed by the following wards and precincts of the City of Memphis and Shelby County: 1, 8, 9, 21 - 1, 2, 3, 4, 22, 27 - 1, 2, 36 - 2, 3, 39, 40 - 1, 2, 41 - 1, 2, 3, 42 - 1, 2, 51 - 1, 2, 70 - 1, 2, 72 -1, 2.

DISTRICT THREE (3) shall be composed of the areas encompassed by the following wards and precincts of the City of Memphis and Shelby County: 37 - 1, 2, 38 - 1, 2, 3, 4, 43 - 1, 2, 3, 4, 44 - 1, 2, 3, 4, 5, 52 - 3, 53 - 1, 2, 54 - 1, 2, 55 - 1, 2, 62, 63 - 1, 2, 64, 68 - 1, 2.

DISTRICT FOUR (4) shall be composed of the areas encompassed by the following wards and precincts of the City of Memphis and Shelby County: 45 - 1, 2, 3, 4, 46 - 1, 2, 3, 56 - 1, 2, 57, 58 - 1, 2, 3, 4, 5, 59 - 1, 2, 3, 65 - 1, 2, 3.

DISTRICT FIVE (5) shall be composed of the areas encompassed by the following wards and precincts of the City of Memphis and Shelby County: Levi - 1, 2, 3, 4, 5, Whitehaven - 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 60 - 1, 2, 3, 4, 5.

DISTRICT SIX (6) shall be composed of the areas encompassed by the following wards and precincts of the City of Memphis and Shelby County: 2, 4, 5, 6, 7 - 1, 2, 11 - 1, 2, 12, 13 - 1, 2, 3, 14 - 1, 2, 23, 24, 25 - 1, 2, 3, 4, 26 - 1, 2, 3, 34 - 1, 2, 35 - 1, 2, 3, 48, 49 - 1, 2 50 - 1, 2.

DISTRICT SEVEN (7) shall be composed of the areas encompassed by the following wards and precincts of the City of Memphis and Shelby County: 15, 16 - 1, 2, 3, 17 - 1, 2, 3, 4, 18, 19, 20 - 1, 2, 3, 28 - 1, 2, 29 - 1, 2, 3, 30, 31 - 1, 2, 3, 4, 32, 33 - 1, 2, 36 - 1, 47 - 1, 2, 3, 52 - 1, 2, 61 - 1, 2.

The Plan further provided as follows:

"In addition to the aforesaid districts, one (1) through seven (7) there shall be four (4) districts numbered consecutively and so designated as District Eight (8), District Nine (9), District Ten (10), and District Eleven (11), each of which districts Eight (8) through Eleven (11) shall be composed of an area co-extensive with the boundary lines of Shelby County, Tennessee."

The reapportionment plan for Shelby County adopted on December 13, 1971, pursuant to T.C.A. Section 5-111 was identical to the aforementioned plan adopted in 1968 and approved by the three Judge Federal Court, with the exception of certain minor ward and precinct adjustments which were made to compensate for changes in population, and is the same plan which is in effect today.

The appellee, Edward B. Peel, a resident of Shelby County, Tennessee, filed this suit in the Chancery Court of Shelby County, Tennessee, on relation of the State of Tennessee to declare the present composition of the Quarterly Court of Shelby County, Tennessee, unconstitutional as being in violation of Article VI, Section 15 of the Constitution of the State of Tennessee and Section 19-102 of the Tennessee Code Annotated. The appellee contends that the Tennessee Constitution and Statutes as construed in the case of State Ex Rel. Jones v. Washington County, (1973), 514 S.W. 2d 51, prohibits the election of Justices of the Peace "at large" and, therefore, Districts Eight through Eleven are in violation of the Tennessee Constitution and are unconstitutional.

The case was tried by the Chancellor upon the Appellee's Motion for Summary Judgment and the Appellants' Motion to Dismiss, or, in the Alternative, for Summary Judgment. The Chancellor granted the Motion of the Appellee for Summary Judgment and denied the motions of the appellants on November 25, 1975. (Exhibit 2). The Chancellor also ruled that

a plan for redistricting the Shelby County Quarterly Court could be submitted prior to the granting of the appeal or could await the determination of this question by the appellate courts, the election to be made by the appellants' counsel. Appellants' counsel elected not to submit a plan for redistricting until this question had been finally determined by the appellate courts.

The Tennessee Court of Appeals, Western Section, affirmed the judgment of the lower court on October 13, 1976. (Exhibit 3). The appellants then petitioned the Tennessee Supreme Court for a writ of certiorari. This was denied on March 28, 1977 and notice of appeal to the United States Supreme Court filed within the applicable time limits.

The questions presented here in appeal were first brought up by the counsel for the appellants in oral argument in the Chancery Court of Shelby County, Tennessee. The view of the Chancellor, Chancellor Rond, was that there was no real conflict between the United States Constitution and the requirements for districting found in Article VI, Section 15 of the Tennessee Constitution. He felt, therefore, that the supremacy clause of the United States Constitution did not control in this matter and did not view the decision of the three Judge United States District Court approving the present plan of apportionment as Constitutional, Hyden v. Baker, 286 F.Supp. 475 (1968), as a controlling case.

The questions presented by this appeal were raised at the appellate stage in the Appellants' Assignment of Errors and Brief on Behalf of Appellants, pp. 13-17. On these pages, in summary, it was stated that Article Two, Clause Two of the Constitution of the United States, "the supremacy clause", should be controlling in this case since the present Quarterly Court of Shelby County, Tennessee is operating under a plan which has been approved by a three Judge Federal Court and thus State Ex Rel. Jones v. Washington County, supra, which dealt with a plan which had not been approved by a Federal Court would not be applicable. Judge Carney in his opinion from the Tennessee Court of Appeals, p. 3, stated:

> "We find no material difference between the apportionment plan of Washington County and the apportionment plan of Shelby County involved in this litigation. We repeat our statement from Jones v. Washington County, supra, '. . . the election of Justices of the Peace from the county at large is impliedly forbidden by Article 6, Section 15, and T.C.A. Section 19-102 and 19-103.'"

Therefore, the Tennessee Court of Appeals ignored the approval of the present apportionment plan of the Quarterly County Court of Shelby County by a three Judge United States District Court.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The nature of this case and of the rulings of the courts below are such as to bring this case within the jurisdictional provisions relied upon, 28 U.S.C. §1257(1), (2) and (3). There are two very basic parts of the United States Constitution which the state court seeks to ignore here. The first of these is Article Two, Clause Two, which provides:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

The second is the equal protection clause of the Fourteenth Amendment to the Constitution of the United States which provides in part:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

When there is an unavoidable conflict between the Federal and a state Constitution, the supremacy clause of course controls. Reynolds v. Sims, 377, U.S. 533, 584 (1964). In the present case, Article VI, Section 15 of the Tennessee Constitution must yield to the equal protection clause of the Fourteenth Amendment. There is a conflict between the two. The Tennessee Constitition ignores the "one man--one vote" interpretation of the equal protection clause of the Fourteenth Amendment and allows voters in one district of a county to vote for three Justices of the Peace while only allowing voters in the other districts to vote for two Justices of the Peace. The Court in State Ex Rel. Jones v. Washington County, supra, seems to feel that this fault could be somehow corrected if the district from which three Justices of the Peace are elected (the district containing the county courthouse) contains one and one-half times as many people as any other district in the county. The fallacy of this thinking lies in the fact that even if the district containing the county town (courthouse) is one and one-half times as large as any other district, each individual voter in that district has three votes to cast while each individual voter in every other district in the county has only two votes to cast. This mandate of state law, it is submitted, is in direct and irreconcilable conflict with the "one man-one vote" mandated by the Federal Constitution. The three Judge United States District Court which approved the present districting plan for the Quarterly County Court of Shelby County, Tennessee in an unpublished

order on September 3, 1968, had stated in Bennett v. Elliott, supra:

> "The objection that the plan violates a state constitutional provision in providing for members elected at large is without merit, since the ultimate measure of the plan's validity is the Fourteenth Amendment to the United States Constitution and not state law." 294 F.Supp. at 810.

Therefore, what the Tennessee courts are attempting is an artful circumvention of the clear mandate given by the three Judge United States District Court. If allowed to do so, they have successfully ignored Article Two, Clause Two of the United States Constitution and the Fourteenth Amendment to the United States Constitution.

The purposes of the supremacy clause in the Constitution were to avoid the disparities, confusions and conflicts that would follow if the Federal Government's general authority was subject to local controls. U.S. v. Allegheny County, Pa., 64 S.Ct. 908, 322 U.S. 174, and decisions of courts of the United States within their sphere of action are as conclusive as laws of Congress made pursuant to the Constitution. Mayor and Aldermen of City of Nashville, v. Cooper, 73 U.S. 247.

Chief Justice Marshall, writing for the majority in Gibbons v. Ogden, 9 Wheat 1, (1824), stated that a federal court decision, if itself constitutional,

must prevail over a state action inconsistent therewith. The basic rule is that whatever the Federal Government ordains is the supreme law of the land and is binding and enforceable on all state actions even though it involves an area where the states could have otherwise acted. There is much authority in this country that holds that the national supremacy provided in the United States Constitution also includes paramount judicial authority. Martin v. Hunter's Lessee, 1 Wheat 304, (1816).

To allow the state courts to circumvent the holding of a United States Court in this case is to ignore the paramount judicial authority of the Federal Court system and the equal protection clause of the United States Constitution. For the reasons given above, the questions presented are so substantial as to require plenary consideration and should be resolved by this Court.

THE OBJECTION THAT THE PRESENT PLAN IS IN VIOLATION OF THE TENNESSEE CONSTITUTION IS WITHOUT MERIT

Numerous federal decisions on the apportionment plans of Tennessee counties have upheld those plans even though they may have impliedly violated the Tennessee Constitution. In the case of Sudekum v. Hayes, 414 F.2d, 41, (1969), the Sixth Circuit Court of Appeals approved a plan of reapportionment for Sumner County, Tennessee, which divided the County into four (4) magisterial districts of approximately equal population with six (6)

magistrates elected from each district, even though the Tennessee Constitution provides that two (2) Justices shall be elected from each district except districts including the county seat which shall elect three (3) Justices. The Court held at p. 42 as follows:

> "On this appeal it is not disputed that the plan adopted by the District Court conforms adequately to the one-man, one-vote rule as required in Avery v. Midland County, supra. The appeal is grounded on the fact that the judgment of the District Court violates Article 6, Section 15 of the Constitution of Tennessee, which provides that two magistrates shall be elected from each civil district, except districts including the county seat, which shall elect three magistrates.
>
> "The judgment shows on its face that the District Judge undertook to find a plan which would conform both to the requirements of Article 6, §15 of the State Constitution and the equal protection clause of the Fourteenth Amendment and found it impossible to do so." (Emphasis added)

Also see Otis v. Boyd, 294 F.Supp. 813, (1968), wherein the District Court approved a plan which divided Sullivan County, Tennessee, into sixteen (16) magisterial districts wherein one (1) district elected as many as eight (8) Justices, some districts elected three

(3) and some districts elected only one (1).

The plan approved for Washington County in 1968 (which was a different plan from the 1972 plan litigated in State Ex Rel. Jones) provided that the county be divided into fourteen (14) districts and that two (2) members of the County Court be elected from each district. The 1968 plan also provided that eight (8) additional members of the Court be elected at large from the entire county, making a total county membership of thirty-six (36). The opponents of the 1968 plan filed exceptions to the proposed plan complaining that the election of eight (8) justices from the county at large violated Article VI, Section 15, of the Tennessee Constitution, which section did not provide for the election of Justices At Large. The Court ruled that the 1968 plan was constitutional and overruled the exceptions and approved the plan as submitted. In commenting upon the objection that the election of Justices At Large violated the State Constitution, the Court stated as follows:

> "The objection that the plan violates a State Constitutional provision in providing for members elected at large is without merit, since the ultimate measure of the plan's validity is the Fourteenth Amendment to the United States Constitution and not State Law." Bennett v. Elliott (1968), 294 F. Supp. 808.

Therefore, it has been clearly established that the Federal Courts have the authority to approve a plan of reapportionment of a Quarterly County Court even though the plan violates the State Constitution.

The present plan of apportionment in Shelby County fully meets the "one man-one vote" requirements of the United States Constitution even though it contains at large districts. Every voter in Shelby County is able to vote for the same number of justices of the peace (squires). Several federal decisions concerning at large positions have upheld them as constitutional; Hyden v. Baker, supra; Bennett v. Elliott, supra; and Sudekum v. Hayes, 414 F.2d, 41, (1969). Indeed, it is very likely that the Tennessee courts would have ruled differently in State Ex Rel. Jones v. Washington County, supra, if Washington County had not changed its reapportionment plan in 1972, since the 1968 plan had the approval of the federal courts and had been declared constitutional under the Fourteenth Amendment to the United States Constitution. In Jones, the Court stated as follows:

> "The plan of reapportionment for Washington County, which was finally approved on January 24, 1972, has never been reviewed by any Federal Court nor any other Court in the State of Tennessee except the Chancery Court of Washington County from which this appeal is taken."

and

> "Since the legality of the present plan of reapportionment of Washington County has never been litigated in any Court except the Chancery Court of Washington County from which this appeal is taken, we hold that the decisions of the Federal Courts in Sudekum v. Hayes, et al, Hyden v. Baker, Otis v. Boyd, and Bennett v. Elliott are not controlling of the case at Bar except insofar as they require the application of the one man, one vote rule."

In brief summation, it is submitted that this situation calls for the application of Article Two, Clause Two of the United States Constitution since what is involved here is an unavoidable conflict between the Tennessee State Constitution and the Fourteenth Amendment to the United States Constitution. The present apportionment plan of Shelby County complies with all requirements of the United States Constitution, including the "one man-one vote" requirement. Apportionment plans with "at large" districts have been expressly approved by the Supreme Court of the United States in the following cases: Fortson v. Dorsey, 85 S.Ct. 498 (1965); Dusch v. Davis, 87 S.Ct. 1554 (1967); Dallas County, Alabama v. Reese, 95 S.Ct. 1706 (1975). The requirements of the Tennessee Constitution, Article VI, Section 15 mandate a districting system which fails to comply with one important part of the

United States Constitution; the Fourteenth Amendment. Therefore the ultimate measure of the plan's validity being the Fourteenth Amendment to the United States Constitution and not state law, the present plan should be allowed to stand unchanged.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted, with briefs on the merits and oral argument, for the resolution of the important questions presented.

RESPECTFULLY SUBMITTED,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LEE HYDEN, ET AL,)

VS.) CIVIL NO. 4674

CHARLES W. BAKER,)
ET AL

ORDER

By order entered July 1, 1968, this court directed defendant Quarterly County Court of Shelby County, Tennessee, to file with the court a proposed plan for reapportioning the membership of that body in compliance with the principles set forth in the opinion of the court in this action on February 13, 1968. It was directed that such proposed plan be filed on or before August 19, 1968, and it was further provided that, within ten (10) days after the filing of such plan. any party in this action would have the right to file objections thereto.

A proposed plan was filed by this defendant August 14, 1968, and no objections have been filed. On the contrary, plaintiffs have moved that the proposed plan be approved and that the court order an election to implement the plan.

Upon consideration, the court is of the opinion that the proposed plan meets the requirements of the opinion heretofore rendered herein and it is, therefore, approved.

EXHIBIT 1

To implement the plan, an election shall be held to fill the positions created thereby, such election to be conducted on November 5, 1968, in conjunction with the General Election of that date. Persons elected to the positions shall take office on January 1, 1969, and hold office until September 1, 1972, or until their successors are elected and qualified.

It is so ORDERED.

/s/ Harry Phillips
CIRCUIT JUDGE

/s/ William E. Miller
DISTRICT JUDGE

/s/ Frank Gray, Jr.
DISTRICT JUDGE

IN THE CHANCERY COURT OF
SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE, Ex Rel, EDWARD B. PEEL,

Plaintiff,

v

SHELBY COUNTY, TENNESSEE, SHELBY COUNTY QUARTERLY COURT,

Defendants.

No. 80437-1(3) R.D.

MEMORANDUM OPINION

This is a suit challenging the composition of the present Shelby County Quarterly Court as being contrary to the provision of Article VI, Section 15, of the Constitution of the State of Tennessee, and T.C.A. 19-102.

The cause comes on to be heard upon the Plaintiffs' Motion for Summary Judgment, and the Defendants' Motion to Dismiss the Complaint, or, in the alternative, for Summary Judgment.

The latter motion is supported by the affidavit of Robert M. Gray, County Court Clerk, and exhibits thereto.

The Attorney General was named a party defendant, and he has answered by declaring the issue a local one and disclaiming any interest in the case.

EXHIBIT 2

A number of issues were raised by the pleadings, but all except the Constitutional question have been disposed of by way of amendments or stipulation of counsel.

The record shows that in 1968 the United States District Court for the Middle District of Tennessee tried togehter the cases of Hyden v. Baker and Bennett v. Elliot (reported in 286 F.Supp. 475). The Court found that the County Court of Shelby County (in the former case) and the County Court of Washington County (in the latter case) as then constituted violated the "one-man, one-vote" rule of Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1326, 12 L.Ed. 2d 506 (1964). In each instance the County Court was directed to submit a proposed plan of redistricting which would be in compliance with the Baker v. Carr principle.

The Shelby County Court adopted a plan whereby there would be eleven (11) elected Justices of the Peace, one (1) each from seven (7) districts, and four (4) from the County at large. This plan was approved by the Federal Court, and is the plan presently in force, except for slight changes in boundaries to conform to population changes.

The Washington County Court adopted a plan whereby the County was divided into fourteen (14) districts, each electing two (2) Justices, in all twenty-eight (28) Justices, plus eleven (11) Justices from the County at large for a total of thirty-six (36) Justices.

However, in 1972 Washington County adopted a new plan whereby the County was divided into sixteen (16) Districts with two (2) Justices from each district and eleven (11) Justices from the County at large, for a total of forty-three (43) Justices.

The complaint herein alleges that the present Court of eleven (11) Justices, seven (7) from each of seven (7) districts and four (4) from the County at large is in violation of Article VI, Section 15, of the Tennessee Constitution, which is as follows:

> "Districts in counties - Justices and Constables - Number-Term-Removal from district. -- The different counties of this State shall be laid of, as the General Assembly may direct, into districts of convenient size, so that the whole number in each County shall not be more than twenty-five, or four for every one hundred square miles. There shall be two Justices of the Peace and one Constable elected in each district by the qualified voters therein, except districts including County towns, which shall elect three Justices and two Constables."

The Code section involved in T.C.A. 19-102, provides as follows:

> "Number from each district. -- For each district of every county, except those districts including county towns, two (2) Justices of the peace shall be elected by the qualified voters therein."

The Plaintiff contends that the presently constituted Court is like that condemned in State Ex Rel Jones v. Washington County, (Tenn. App. W.S. 1973), 514 S.W. 2d 51, Aff. 514 S.W. 2d 57. In that case the Plaintiffs claimed that the County Court consisting of two (2) Justices from each of the Sixteen (16) districts and eleven (11) Justices from the County "at large" violated the Constitution and the quoted Code Section.

In holding such a plan unconstitutional the Court said:

> "We hold that the election of more than two Justices of the Peace from a magisterial district other than the district containing the county town is impliedly forbidden by T.C.A. Section 19-102. We further hold that T.C.A. Section 19-103, which provides for the election of three Justices of the Peace from the district which includes the county town is entirely valid as long as such district contains one and one-half times the number of people contained in the other districts which elect two Justices each. Such a plan was approved for Bledsoe County, Tennessee, on August 10, 1972, in the case of Swafford et al v. Hale et al, in the Southern District of the United States District Court for the Eastern District of Tennessee by Honorable Frank W. Wilson, Judge.

We also hold that the election of the Justices of the Peace from the county at large is impliedly forbidden by Article 6, Section 15, and T.C.A. Section 19-102 and 19-103. Now, it is true that in the case of Sudekum et al v. John Hayes et al, supra, involving the legality of a reapportionment plan for Sumner County, Tennessee, the Circuit Court of Appeals expressly overruled the contention of the appellants that the plan was invalid because in violation of Article 6, Section 15, of the Tennessee Constitution which provided for the election of two magistrates from each civil district. However, a reading of the opinion in Sudekum v. Hayes shows that the Court found that the District Judge did not undertake to find a plan which would conform both to the requirements of Article 6, Section 15, of the Tennessee Constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution and found it impossible to do so. On such finding of inability to comply with both, the Circuit Court of Appeals held that the Tennessee Constitution must yield to the equal protection clause of the Fourteenth Amendment to the United States Constitution. Apparently, there had been no attempt to redistrict Sumner County under the provisions of Chapter 599 of the Public Acts of Tennessee of 1968.

There is no showing in the case at bar that Washington County cannot be reasonably apportioned in accordance with the provisions of Chapter 599 of the Public Acts of 1968 and also in compliance with the one man, one vote principle. There is no proof that the Quarterly County Court of Washington County has made any effort to reapportion according to the provisions of said chapter by limiting the Justices to two from each district.

Since the legality of the present plan of reapportionment of Washington County has never been litigated in any court except the Chancery Court of Washington County from which this appeal is taken, we hold that the decisions of the Federal Courts in Sudekum v. Hayes et al, Hyden v. Baker, Otis v. Boyd, and Bennett v. Elliott are not controlling of the case at bar except insofar as they require the application of the one man, one vote rule. His Honor the Chancellor was in error in holding that said cases did apply. Accordingly, assignments of error XI, XII, XIII, and XIV are sustained. Reference is made to an interesting discussion of the subject of reapportionment in an article entitled 'A Short Inquiry into Tennessee County Court Apportionment by the Federal Judiciary', by Greene & Hobday, 37 Tenne Law Review, page 528, Spring Issue 1970."

The Defendants argue that the conclusion reached in State ex rel Jones can be distinguished from this case because the Shelby County Court plan was specifically approved by the Constitutional Court in Hyden v. Baker by an order entered September 3, 1968, which order is in part as follows:

> "A proposed plan was filed by this defendant August 14, 1968, and no objections have been filed. On the contrary, plaintiffs have moved that the proposed plan be approved and that the court order an election to implement the plan. Upon consideration, the Court is of the opinion that the proposed plan meets the requirements of the opinion heretofore rendered herein and it is, therefore, approved."

On the other hand the plan in Washington County was the one adopted by the County Court in 1972 and, as stated in the Court's opinion has not been approved by any Court other than the Chancery Court of Washington.

The difference is material, according to the Defendants, by reason of the statement in Sudekum v. Hayes, 414 F.2d 41 (1969), quoting at page 42 from Bennett v. Elliot:

> "The objection that the plan violates a state constitutional provision in providing for members elected at large is without merit, since the ultimate measure of the

plan's validity is the Fourteenth Amendment to the United States Constitution and not state law."

However, in the portion of the opinion copied herein the Court of Appeals defines the limitation of the holding in Sudekum v. Hayes.

The motion of the plaintiff for a Summary Judgment is granted and the Motions of the Defendants denied.

An order shall be prepared accordingly in which order the exceptions of the Defendants shall be preserved. The order shall provide that the plan of redistricting may be submitted prior to the granting of the appeal or shall await the determination of this question by the Appellate Courts; such election to be made by the Defendants' counsel.

The costs are adjudged against the Defendants.

/s/ Charles A. Rond
CHANCELLOR
11/25/75

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

STATE OF TENNESSEE, EX REL EDWARD B. PEEL PLAINTIFF-APPELLEE	)	
VS.	)	FROM THE CHANCERY COURT OF SHELBY COUNTY
SHELBY COUNTY, TENNESSEE and THE MEMBERS OF THE COUNTY QUARTERLY COURT DEFENDANTS-APPELLANTS	)	HONORABLE CHARLES A. ROND, CHANCELLOR

FOR PLAINTIFF-APPELLEE

Edward B. Peel
Memphis, Tennessee

FOR DEFENDANTS-APPELLANTS

C. Cleveland Drennon, Jr.
County Attorney, Shelby County Tennessee
J. Minor Tait, Jr.
Assistant County Attorney
Memphis, Tennessee

OPINION FILED: October 13, 1976

AFFIRMED

CARNEY, P. J.

MATHERNE, J. (Concurs)
NEARN, J. (Concurs)

EXHIBIT 3

Plaintiff and Relator, Edward B. Peel, a citizen of Shelby County, Tennessee, brougt this suit alleging that the present plan of apportionment providing for some justices of the peace to be elected from the county at large is illegal. Plaintiff contends the plan is a violation of Article 6, Section 15, of the Tennessee Constitution and T.C.A. Sections 19-102 and 19-103. Plaintiff's suit is predicated entirely upon the recent case of State ex rel Carl A. Jones, et al v. Washington County, Tennessee, et al, Court of Appeals of Tennessee, Western Section, decided January 22, 1973, affirmed by the Tennessee Supreme Court June 15, 1974, reported in 514 S.W. 2d 51. Defendants, members of the Shelby County Quarterly Court, contended that State ex rel Jones v. Washington County is not controlling because the Shelby County apportionment plan was specifically approved as being constitutional in Hyden v. Baker, (1968), 286 F.Supp. 475, decision by a Three Judge Federal District Court, whereas the apportionment plan of Washington County declared illegal in State ex rel Jones v. Washington County was adopted in 1972 and had not been previously approved by any court other than the Chancery Court of Washington County.

Both parties filed motion for summary judgment. The Chancellor granted Plaintiff's motion for summary judgment on the authority of State ex rel Jones v. Washington County and ordered the Defendants to submit a plan of redistricting the Shelby County Quarterly Court after the present litigation has been finally determined by the appellate courts.

By their three assignments of error the Defendants make the same contention as made in the Court below.

The Shelby County apportionment plan deivides the county into seven substantially equally populated districts. From each district one justice of the peace is elected and then the entire county is designated as justice of the peace districts 8, 9, 10, and 11. From each of these four districts, one justice of the peace is elected by all the voters of Shelby County.

The apportionment plan for Washington County, Tennessee, held illegal in State ex rel Jones v. Washington County provided for sixteen separate civil districts, two justices being elected from each district for a total of thirty-two, plus eleven justices of the peace to be elected from the county at large for a total of forty-three justices of the peace.

Article 6, Section 15, of the Constitution and T.C.A. Sections 19-102 and 19-103, provide as follows:

> Article 6, Section 15: "Districts in counties--Justices and constables--Number--Term--Removal from district.--The different Counties of this State shall be laid off, as the General Assembly may direct, into districts of convenient size, so that the whole number in each County shall not be more than twenty-five, or four for every one hundred square miles. There shall be two Justices of the Peace and

one Constable elected in each district by the qualified voters therein, except districts including County towns, which shall elect three Justices and two Constables. The jurisdiction of said officers ahll be coextensive with the County. Justices of the Peace shall be elected for the term of six, and Constables for the term of two years. Upon the removal of either of said officers from the district in which he was elected, his office shall become vacant from the time of such removal. Justices of the Peace shall be commissioned by the Governor. The Legislature shall have power to provide for the appointment of an additional number of Justices of the Peace in incorporated towns."

T.C.A. Section 19-102: "Rural districts.--For each district of every county, except those districts including county or incorporated towns, two (2) justices of the peace shall be elected by the qualified voters therein."

T.C.A. Section 19-103: "Districts including county towns.--For every other district in the state which includes a county town, three (3) justices of the peace may be elected by the qualified voters therein."

"At large" districts have been approved by the United States Supreme Court as complying with the one-man, one-vote, rule. Dallas County, Alabama v. Reese, (1975), 95 S.Ct. 1906; Dusch v. Davis, (1967), 387 U.S. 112, 87 S.Ct. 1554. Reynolds v. Sims, (1964), 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506, Rehearing Denied October 12, 1964, 379 U.S. 870, 871, 85 S.Ct. 12, 13, is authority for the general statement that where there is an unavoidable conflict between the Federal Constitution and a State Constitution, the supremacy clause controls in favor of the United States Constitution. The cases of Sudekum v. Hayes, (1969), 414 F.2d 41; Hyden v. Baker and Bennett v. Elliott, (1968), 286 F.Supp. 475, were dismissed in our opinion in State ex rel v. Washington County.

In the case of Seals v. The Quarterly Court of Madison County, Tennessee, decided April 9, 1976, the U. S. District Court for the Western District of Tennessee at Memphis, Honorable Harry Wellford, District Judge, held that the 1968 reapportionment plan by Madison County, Tennessee, under which justices of the peace were elected at large was illegal under Tennessee law, to-wit, Jones v. Washington County. See also Seals v. Quarterly Court of Madison County, 526 F.2d 216 (6th Cir. 1975).

We find no material difference between the apportionment plan of Washington County and the apportionment plan of Shelby County involved in this litigation. We repeat our statement from Jones v.

Washington County, supra, ". . . the election of justices of the peace from the county at large is impliedly forbidden by Article 6, Section 15, and T.C.A. Section 19-102 and 19-103." Under T.C.A. Section 5-111 Plaintiff Relator is entitled to relief by mandamus if necessary to require the reapportionment of the Shelby County Quarterly Court so as to meet both federal and state law. Bradley v. State ex rel Haggard, (1969), 222 Tenn. 535, 438 S.W. 2d 738.

The assignments of error are respectfully overruled, the judgement of the lower Court is affirmed, and the cause is remanded to the Chancery Court of Shelby County. The costs of this appeal are taxed to the Appellants.

CARNEY, P. J.

MATHERNE, J. (Concurs

NEARNE, J. (Concurs)

3/28/77

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

SHELBY COUNTY, TENNESSEE, and THE MEMBERS OF THE SHELBY COUNTY QUARTERLY COURT,	)	
Petitioners,	)	SHELBY CHANCERY
V.	)	
STATE OF TENNESSEE, EX REL. EDWARD B. PEEL,	)	
Respondent.	)	

ORDER

Upon consideration of the petition for certiorari and reply thereto, briefs of counsel and the entire record, the Court is of the opinion that the petition for certiorari should be and the same is hereby denied at the cost of the Petitioners.

PER CURIAM

EXHIBIT 4

IN THE SUPREME COURT OF
THE STATE OF TENNESSEE

SHELBY COUNTY, TENNESSEE and THE MEMBERS OF THE SHELBY COUNTY QUARTERLY COURT,	)	
Appellants,	)	
-VS-	)	NO.
STATE OF TENNESSEE, EX REL. EDWARD B. PEEL,	)	
Appellee		

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Shelby County, Tennessee and the members of the Shelby County Quarterly Court, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of denial of certiorari entered in this action on March 28, 1977.

This appeal is taken pursuant to 28 U.S.C. §1257(1), 28 U.S.C. §1257(2) and 28 U.S.c. §1257(3).

RESPECTFULLY SUBMITTED,

/s/ C. Cleveland Drennon, Jr.
County Attorney, Shelby
County, Tennessee

/s/ J. Minor Tait, Jr.
Assistant County Attorney
Shelby County, Tennessee

/s/Warner Hodges,III
Assistant County Attorney
Shelby County, Tennessee

(Certificate of Service Omitted in Printing)